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DEPARTMENT OF STATE

22 CFR Part 147

[Public Notice: 10775]

RIN 1400-AE35

Information and Communication Technology

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: The Department of State (the Department) updates and revises the rules that implement Section 508 of the Rehabilitation Act of 1973, consistent with updates to accessibility standards from the U.S. Access Board.

DATES: This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: Alice Kottmyer, Attorney Adviser, Office of Management, Office of the Legal Adviser, (202) 647-2318.

SUPPLEMENTARY INFORMATION:

Background

Section 508 authorizes the Access Board to establish standards for technical and functional performance criteria to ensure that information technologies are accessible to and usable by persons with disabilities. The Department published its initial rules implementing Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794d (Section 508), in 2016. 81 FR 32645.

In January of 2017, the Access Board published a “refresh” of its existing standards and guidelines for information and communication technology (ICT) covered by Section 508 of the Rehabilitation Act or Section 255 of the Communications Act. The rule jointly updated and reorganized the Section 508 standards and Section 255 guidelines to advance accessibility, facilitate compliance, and harmonize the requirements with other standards in the United States and abroad. 82 FR 5832. Federal agencies, however, need only comply with the revised 508 standards (codified at 38 CFR 1194.1 and Appendices A, C, and D), whereas the revised Section 255 guidelines apply exclusively to telecommunications equipment manufacturers.

Proposed Rule and Comments.

On December 13, 2018, the Department published its proposed rule to implement the refreshed Section 508 standards. 83 FR 64046. The Department received five comments in response to the proposed rule, all supportive. Four of the five commenters asserted that the burden or impact on the public would be minimal, and is outweighed by the benefit to the public from the rule.

Why is the Department promulgating this rule?

The amendments to Part 147 in this rule are intended to align the Department’s regulations with the Access Board’s revised Section 508 standards. The Department is also adding one new provision (§147.9), which provides a prohibition against intimidation or retaliation against anyone who files a complaint, furnishes information, or engages in other lawful activities in furtherance of Section 508, part 147, or other regulations that implement Section 508.

REGULATORY FINDINGS:

Administrative Procedure Act

This Department published this rule as a proposed rule with a 60-day comment period.

Regulatory Flexibility Act / Executive Order 13272: Consideration of Small Entities in Agency Rulemaking.

The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or tribal governments, or by the private sector. This rule will not result in any such expenditure, nor will it significantly or uniquely affect small governments.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804. With this rulemaking, the Department is making changes to terminology to align its rules with those of the Access Board. The Department is aware of no monetary effect on the economy that would result from this rulemaking, nor will there be any increase in costs or prices; or any effect on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

Executive Order 12866: Regulatory Planning and Review

The Department of State does not consider this rule to be a “significant regulatory action” under Executive Order 12866, section 3(f). The Department of State has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866.

Executive Orders 12372: Intergovernmental Review of Federal Programs and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13563: Improving Regulation and Regulatory Review

The Department has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This proposed rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

Paperwork Reduction Act

The regulations in 22 CFR part 147 are related to OMB Control Number 1405-0220, which is in effect. This rule does not impose new or revised information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 147

Civil rights, Communications equipment, Computer technology, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Accordingly, for the reasons set forth in the preamble, the Department of State amends 22 CFR part 147 as follows:

PART 147—INFORMATION AND COMMUNICATION TECHNOLOGY

1. The authority citation for part 147 continues to read as follows:

Authority: 22 U.S.C. 2651a; 29 U.S.C. 794, 794d; 36 CFR part 1194.

2. Revise the heading for part 147 as set forth above.

Subpart A of Part 147- [Amended]

3. In subpart A of part 147:

- a. Remove “electronic and information technology” and add in its place “information and communication technology”, wherever it occurs.

- b. Remove the abbreviation “EIT” and add in its place the abbreviation “ICT”, wherever it occurs.

§147.2 [Amended]

4. In §147.2, remove “36 CFR 1194.4” and add in its place “E103.4 of appendix A to 36 CFR part 1194.”

5. Amend §147.3, by revising the introductory text and the definition “*Section 508*” to read as follows:

§147.3 Definitions.

The Department of State adopts the definitions in E103.4 of appendix A to 36 CFR part 1194. In addition, as used in this part:

* * * * *

Section 508 means section 508 of the Rehabilitation Act of 1973, as amended, codified at 29 U.S.C. 794d.

§147.4 [Amended]

6. Amend §147.4 by:

a. In paragraph (a), remove “Electronic and Information Technology Accessibility Standards (36 CFR part 1194)” and add in its place “Revised 508 Standards (36 CFR 1194.1 and appendices A, C and D to 36 CFR part 1194).”

b. In paragraph (b), remove “36 CFR part 1194” and add in its place “36 CFR 1194.1.”

§147.5 [Amended]

7. In §147.5, remove “EIT Accessibility Standards” and add in its place “Revised 508 Standards.”

8. Revise the heading for §147.6 to read as follows:

§147.6 Information and communication technology requirements.

9. Amend §147.6 by:

a. In paragraph (b), remove “Electronic and Information Technology Accessibility Standards, 36 CFR part 1194” and add in its place “Revised 508 Standards (36 CFR 1194.1 and appendices A, C and D to 36 CFR part 1194).”

b. In paragraph (c), remove “36 CFR part 1194” and add in its place “36 CFR 1194.1”.

c. In paragraph (d), remove “36 CFR part 1194” and add in its place “36 CFR 1194.1”.

Subpart B – [Amended]

10. In subpart B of part 147 remove the abbreviation “EIT” and add in its place the abbreviation “ICT”, wherever it occurs.

§147.7 [Amended]

11. Amend §147.7(b) by removing “36 CFR part 1194” and adding in its place “36 CFR 1194.1”.

12. Add §147.9 to read as follows:

§147.9 Intimidation and retaliation prohibited.

No person may discharge, intimidate, retaliate, threaten, coerce or otherwise discriminate against any person because such person has filed a complaint, furnished information, assisted or participated in any manner in an investigation, review, hearing or any other activity related to the administration of, or exercise of authority under, or privilege secured by Section 508 and the regulations in this part.

Dated: July 15, 2019.

Gregory B. Smith,
Director, Office of Civil Rights
U.S. Department of State

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